REMARKS

Applicant submits that the present request for reconsideration is fully responsive to the Office Action dated June 14, 2006 and, thus, the application is in condition for allowance.

By this reply, claims 48, 50 and 52-67 remain pending. Claims 29-34, 37-45 and 47 remain withdrawn from consideration at this time. Of the pending claims, claims 48, 50, 52, 53, 58, 59 and 62 are independent. An expedited review and allowance of the application is respectfully requested.

In the outstanding Office Action, claims 48, 50, 52, 62-65 and 67 were rejected under 35 U.S.C. § 102(e) as being anticipated by Morris (U.S. Pub. App. No. 2004/0249394). It is asserted that Morris discloses a device that is substantially the same as the present invention as recited in the pending claims. Thus, it is concluded that Morris anticipates the present invention as recited in the present claims. Applicant respectfully traverses.

Without considering any substantive differences between the cited art and the present invention as recited in the pending claims, Applicant notes that Morris cannot qualify as "prior art" under any US statute because the priority dates of the present application pre-dates any which Morris could possible claim priority back to.

The present application was filed on February 26, 2002. It also claims priority back to two provisional applications, filed on February 26, 2001 and August 20, 2001. It is evident that the Applicant had conceived of the invention, as recited in the pending rejected claims, before the filing date of February 26, 2001, as evident in the embodiments shown and described within the provisional application filed on such date. See, for example, figures 3 and 4, which show and disclose embodiments of the present invention which are within the scope of the presently pending claims. Thus, right of priority to the present invention, as recited in the pending, but

rejected claims, extends back to at least the date of filing of the initial provisional patent application, namely February 26, 2001.

In sharp contrast, the cited reference, Morris, has a filing date of April 1, 2004, over a year beyond and thus well after the filing date (February 26, 2002) of the present application. Furthermore, the cited Morris reference claims to be a continuation-in-part ("CIP") of a prior application, 10/165,468, filed on June 7, 2002. Even assuming that its predecessor patent application contained material which could have been material to the present claims, again, the filing date of even this CIP application is nearly four months after the filing date (February 26, 2002) of the present application. Thus, even the CIP, in and of itself, cannot act as "prior art." The CIP claims priority to a provisional patent application, 60/310,220, filed on August 6, 2001. There is absolutely no indication that this provisional patent application disclosed material which could be used in any substantive rejection of the present claims. Even though no such proof is presented, it is important to point out that even if, *arguendo*, this earliest filed Morris provisional application (filed August 6, 2001) contains or recites material that may be considered material to the patentability of the present application, it is still inapplicable as "prior art" under any statutory provision because its date is after the earliest date of priority of the present application.

The Office Action has rejected the current claims under 35 U.S.C. § 102(e). However, such section requires that a reference be a patent application by another and filed before the invention by the Applicant. However, since it has been shown above that the Morris reference, at best, has filing or priority dates that are after the Applicant's invention, namely after the earliest priority dates of the present application, a proper 35 U.S.C. § 102(e) is inapplicable in the present case, Morris cannot act as "prior art," and the rejection should be withdrawn.

In the outstanding Office Action, claims 53-61 and 66 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Morris in view of Klein (U.S. Pat. No. 4,491,135) and Smith (U.S. Pat. No. 5,797,961). It is asserted that Morris discloses substantially the same device as recited in the pending claims but for a needle having an opening receiving the suture. It is then asserted the Klein and Smith teach such deficiency and therefore it would have been obvious to combine the teachings of Morris, Klein and Smith to render obvious the present invention as recited in the pending claims. Applicant respectfully traverses.

Neither Morris, Klein nor Smith, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the pending claims. As discussed in detail above, Morris cannot qualify as "prior art" under any US patent statute and, therefore, cannot be used in the rejection of the claims pending herein. Thus, without the use of Morris, the current rejection based on a combination of references cannot stand. Also, because Morris cannot be used as prior art, no substantive discussion will be presented. Furthermore, neither Klein nor Smith discloses the current invention as recited in the pending claims, such deficiency in teaching being admitted in the Office Action.

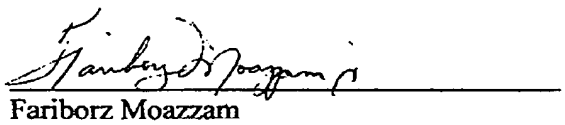
If any fees are associated with the entering and consideration of this request for consideration, please charge such fees to our Deposit Account 50-2882.

As all of the outstanding rejections have been traversed and all of the claims are believed to be in condition for allowance, Applicant respectfully requests issuance of a Notice of Allowance. If the undersigned attorney can assist in any matters regarding examination of this application, Examiner is encouraged to call at the number listed below.

Attorney Docket No.: DID-101 **PATENT**
Appl. Ser. No.: 10/084,283

Respectfully submitted,

Date: 16 August 2006



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